

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY,)

Plaintiff)

v.)

ADP MARSHALL, INC., a FLUOR DANIEL COMPANY, and)
FIREMAN'S FUND INSURANCE COMPANY,)

Defendants)

CIVIL ACTION
NO. 04-CV-10203-PBS

ADP MARSHALL, INC.,)

Plaintiff-in-Counterclaim,)

v.)

MASSACHUSETTS DEVELOPMENT FINANCE AGENCY,)

Defendant-in-Counterclaim)

ADP MARSHALL, INC.,)

Third-Party Plaintiff)

v.)

ALLIED CONSULTING ENGINEERING SERVICES, INC.,)
ANDOVER CONTROLS CORPORATION, R&R WINDOW)
CONTRACTORS, INC. and DELTA KEYSpan, INC. n/k/a)
DELTA KEYSpan, LLC,)

Third-Party Defendants)

AFFIDAVIT OF KENNETH M ELOVITZ, PE

I, Kenneth M. Elovitz, hereby certify upon personal knowledge and under the pains
and penalties of perjury as follows:

1. I am a professional engineer licensed to practice in the Commonwealth of Massachusetts.
2. I am also an attorney and a member in good standing of the bar of Massachusetts.
3. I have been qualified as an engineering expert by courts in the Commonwealth of Massachusetts on several occasions.
4. I have been retained to serve as a heating, ventilation, and air conditioning ("HVAC") expert for Allied Consulting Engineering Services, Inc. ("Allied") in connection with this matter.
5. I have reviewed Allied's contract with ADP Marshall, Inc., the HVAC plans and specifications, Allied's HVAC design drawings and calculations, and the architectural drawings, prepared in connection with the project to construct the Advanced Technology and Manufacturing Center (the "Center"). I have also visited the Center on two separate occasions to examine the HVAC system.
6. I have reviewed the report prepared by Richard Comeau, the HVAC expert retained by the Massachusetts Development Finance Agency.
7. Several of the HVAC issues identified by Richard Comeau as "design-related" are in fact related to field execution and installation.
8. The Center's boiler water loop pumps were not installed according to Allied's HVAC design. The design drawings call for the pumps to be 470 GPM. The pumps that were installed are sized at 325 GPM.
9. The services that Allied contracted to provide did not include installation.
10. Tom Hughes, or another representative of ADP Marshall ("Marshall") showed me an e-mail or other correspondence where Marshall offered to upgrade the

air handling unit ("AHU") in the "knuckle" section of the Center from 10,000 to 12,000 cubic feet/minute ("CFM") for a certain extra cost, or a 15,000 CFM AHU for further extra cost. That document indicated that the 12,000 CFM AHU upgrade was accepted, and that the 15,000 CFM AHU was not. Nevertheless, Allied designed to the HVAC system to 15,000 CFM, which represented an upgrade for the owner.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 20th DAY OF JANUARY, 2005.

A handwritten signature in black ink, appearing to read "Kenneth M. Elovitz", is written over a horizontal line.

Kenneth M. Elovitz, PE